

HOUSE No. 1290

By Mr. Torisi of North Andover, petition of David M. Torrisi and others for legislation to establish a home preservation fund to preserve and promote homeownership. Housing.

The Commonwealth of Massachusetts

PETITION OF:

David M. Torrisi	Elizabeth A. Malia
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In the Year Two Thousand and Seven.

AN ACT TO PRESERVE AND PROMOTE HOMEOWNERSHIP.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2004 Offi-
2 cial Edition, are hereby amended by inserting after chapter 121C
3 the following new chapter:—

4 **CHAPTER 121E.** 5 **Home Preservation Fund.**

6 Section 1. There is hereby established and placed upon the
7 books of the commonwealth a home preservation fund to be
8 administered by the department of housing and community devel-
9 opment, into which shall be credited:
10 (a) any appropriations or other monies authorized by the
11 general court and specifically designated to be credited to the
12 fund;

13 (b) grants, gifts or any other monies directed to the fund;
14 (c) any income derived from an investment of amounts credited
15 to the fund; and
16 (d) the repayment of loans made to qualified homeowners as set
17 forth in this section.

18 Section 2. The department shall hold the fund in an account
19 segregated from other department funds and accounts and shall
20 utilize, invest or reinvest the proceeds of the fund and income
21 derived therefrom for the following general purposes:

22 (a) For grants to non-profit organizations approved by the
23 department to provide services as part of a Massachusetts home
24 preservation initiative. Those services shall include, but not be
25 limited to:

26 (i) providing outreach and education to Massachusetts home-
27 owners and potential homeowners to expand the awareness about
28 the rise in mortgage foreclosures, the warning signs of predatory
29 loans, the steps they can take to protect their property and
30 finances and where to go for assistance;

31 (ii) providing in person counseling and legal services to Massa-
32 chusetts homeowners who are facing foreclosure of their owner-
33 occupied homes or are at risk of foreclosure, working with lenders
34 to resolve issues of arrears owed on mortgages of such home-
35 owners, and assisting homeowners to refinance their home mort-
36 gages when possible.

37 (b) For grants and loans to provide payment relief to Massachu-
38 setts homeowners facing foreclosure of their owner-occupied
39 homes because they have been victims of abusive mortgage
40 lending practices, as defined by the department of housing and
41 community development. The Fund may be used to refinance,
42 assist in refinancing, or pay the arrearage due on loans as
43 described in this section. Assistance may be provided in accor-
44 dance with this section if:

45 (i) The property securing the mortgage, or other security
46 interest in the case of units in cooperative projects, is a dwelling
47 house of 4 or less separate households or a residential condo-
48 minium or cooperative unit that is owner-occupied, serves as the
49 principal residence of the mortgagor, and is located in Massachu-
50 setts;

- 51 (ii) The mortgagor is a resident of Massachusetts and is suf-
52 fering financial hardship, including a lack of assets, which render
53 the mortgagor unable to correct the delinquency or delinquencies
54 within a reasonable time and make full mortgage payment;
- 55 (iii) The mortgagor earns no more than 135% of the area
56 median income, adjusted for family size;
- 57 (iv) Any mortgagee has indicated to the mortgagor its intention
58 to foreclose;
- 59 (v) Payments under any mortgage have been contractually
60 delinquent for at least sixty days; and
- 61 (vi) The department has determined that there is a reasonable
62 prospect that the mortgagor will be able to resume full mortgage
63 payments within twelve months after the beginning of the period
64 for which assistance payments are provided under this section.

1 SECTION 2. Section 3 of Chapter 183C of the General Laws,
2 as so appearing, is hereby amended by striking out the second sen-
3 tence and inserting in place thereof the following new sentence:—
4 Counseling shall be performed in person and shall include, at a
5 minimum, a review of the mortgagor's income and expenses, the
6 terms of the proposed loan transaction, and the truth in lending
7 and good faith estimate statements provided by the lender.

1 SECTION 3. Chapter 183 of the General Laws, as so
2 appearing, is hereby amended by inserting after section 57 the
3 following new section:—

4 Section 57A: Good Faith and Fair Dealing in Home Loan
5 Servicing.

6 (a) For the purposes of this section, the following words,
7 unless the context otherwise requires, shall have the following
8 meanings:

9 "Accelerated", means any action by the mortgagee or servicer
10 to declare the entire mortgage amount due before the maturity
11 date following the mortgagor's breach of any covenant or agree-
12 ment in the security instrument.

13 "Home loan", any loan secured by a first lien or second or sub-
14 sequent lien on a dwelling house of 4 or less separate households
15 or on a residential condominium or cooperative unit occupied or
16 to be occupied in whole or in part by the mortgagor.

17 “Mortgagee” or “mortgage holder”, the holder of record of a
18 mortgage deed; provided, however, that if the mortgage deed has
19 been assigned of record, mortgagee or mortgage holder shall mean
20 the last person to whom such mortgage deed has been assigned of
21 record.

22 “Mortgage servicer”, the last person servicing a home loan,
23 whether or not appearing of record as the mortgagee or the mort-
24 gage holder.

25 “Person”, an individual, corporation, business trust, testamen-
26 tary trust, partnership, association, joint venture, government,
27 governmental subdivision or department or other legal or com-
28 mercial entity.

29 (b) Duty of Good Faith and Fair Dealing. The servicer is the
30 agent of the mortgagee or mortgage holder, and both owe a duty
31 of good faith and fair dealing to the mortgagor in all dealings
32 related to a home loan.

33 (c) Rules for Assessment of Fees. The following rules shall be
34 applicable to every home loan:

35 (1) No mortgagee or servicer shall assess or receive any fees or
36 charges other than interest, late charges or penalties as specifically
37 authorized in section 59, fees authorized by section 63A, or fees
38 assessed for non-sufficient funds, and charges allowed pursuant to
39 the section, until the loan is accelerated;

40 (2) Any fee charged by a mortgagee or servicer must be i) rea-
41 sonable, ii) for services actually rendered, and iii) specifically
42 authorized by the loan contract and this chapter;

43 (3) A fee which is otherwise legal under this section shall be i)
44 assessed within 30 days of the date on which the fee was accrued;
45 and ii) explained clearly and conspicuously in the next periodic
46 statement provided to the mortgagor. Failure to provide this infor-
47 mation or charge the fee within the allowable time and in the
48 manner required, shall be a waiver of the fee;

49 (4) A monthly periodic statement shall be provided to the mort-
50 gator which includes, but is not limited to the following informa-
51 tion: (i) the application of the prior month’s payment including the
52 allocation of the payment to interest, principal, escrow and fees;
53 (ii) the status of the escrow account, including the payments into
54 and from the escrow account; (iii) the assessment of fees, accruing
55 in the previous month, including their cause and the date they

56 accrued; and (iv) a local or toll-free telephone number that allows
57 the mortgagor access to a live person with the information and
58 authority to answer questions and resolve disputes regarding the
59 account.

60 (d) Information Exchange and Dispute Requirements — The
61 servicer shall respond in writing within 10 days of receipt of a
62 mortgagor's written request for information and resolution of dis-
63 putes. This obligation shall include, but not be limited to:

64 (1) Correcting of errors relating to allocation of payments;

65 (2) Providing the current balance due on the loan, including the
66 principal due, interest, late fees due, the escrow balance, and the
67 amount of any escrow deficiencies or shortages;

68 (3) Providing a full payment history; and

69 (4) Providing the identity, address and other relevant informa-
70 tion about the owner or assignee of the loan.

71 (e) Notwithstanding the forgoing, section (d) shall not apply to
72 a mortgagee's or servicer's duties under sections 54 to 55, inclu-
73 sive.

74 (f) Prompt Posting of Payments Required — All amounts paid
75 to a mortgagee or its servicer shall be credited on the date it is
76 received against payments due.

77 (g) Obligations of Servicer to Handle Escrow Funds — The
78 servicer shall make all payments from the escrow account held for
79 the mortgagor for insurance, taxes and other charges with respect
80 to the property in a timely manner.

81 (h) Penalties. Any person who fails to comply with any require-
82 ment imposed under this section, shall be liable to a mortgagor in
83 an amount equal to the actual damages sustained by the mortgagor
84 as a result of the failure, but in no event less than \$1,000.

85 An action under this section shall be brought in any court
86 within three years from the date of the occurrence. This para-
87 graph does not bar a person from asserting a violation of this
88 section in an action to collect the debt, or foreclose upon the
89 home, or to stop a foreclosure upon the home, which was brought
90 more than three years from the date of the occurrence of the viola-
91 tion as a matter of defense by recoupment or set-off in such
92 action. An action under this section does not create an indepen-
93 dent basis for removal of an action to a court.

94 An action to enforce a violation of this section may also be
95 brought in any court, by the attorney general of the common-
96 wealth within three years of the violation. An action under this
97 section does not create an independent basis for removal of an
98 action to a court.

99 The prevailing party in an action brought pursuant to this
100 section shall be awarded the costs of the action and a reasonable
101 attorney's fee as determined by the court.

1 SECTION 4. Chapter 244 of the General Laws, as so
2 appearing, is hereby amended by inserting after section 35 the
3 following new section 35A:—

4 Section 35A. Right to Cure.

5 (a) A mortgagor shall have the right at any time, up to the time
6 the property is sold at auction or otherwise transferred, to cure a
7 default or breach of the security instrument and reinstate the loan.

8 (b) Following a mortgagor's breach of the security instrument,
9 and prior to acceleration, a notice of the right to cure the default
10 must be delivered to the mortgagor informing the mortgagor of
11 the following:

12 (1) The nature of the default claimed on the home loan and of
13 the mortgagor's right to cure the default by paying the sum of
14 money required to cure the default. If the amount necessary to
15 cure the default will change during the 30 day period after the
16 effective date of the notice due to the application of a daily
17 interest rate or the addition of late fees, the notice shall give suffi-
18 cient information to enable the mortgagor to calculate the amount
19 due at any point during the 30 day period;

20 (2) The date by which the mortgagor shall cure the default to
21 avoid acceleration and initiation of foreclosure or other action to
22 seize the home, which date shall not be less than 30 days after the
23 date the notice is mailed and the name, address and local or toll
24 free phone number of a person to whom the payment or tender
25 shall be made;

26 (3) That, if the mortgagor does not cure the default by the date
27 specified, the mortgagee or servicer may take steps to terminate
28 the mortgagor's ownership in the property by commencing a fore-
29 closure proceeding or other action to seize the home;

30 (4) The name and address of the mortgagee or servicer and the
31 toll-free telephone number of a representative of the mortgagee or
32 servicer whom the mortgagor may contact if the mortgagor dis-
33 agrees with the mortgagee's or servicer's assertion that a default
34 has occurred or the correctness of the mortgagee's or servicer's
35 calculation of the amount required to cure the default;

36 (5) That a repayment plan, forbearance, loan modification, or
37 other workout tool may be available to help the mortgagor repay
38 the arrears and the name, address, and local or toll free telephone
39 number of the creditor or servicer whom the mortgagor may con-
40 tact to request this assistance; and

41 (6) That the mortgagor may be eligible for assistance from the
42 home preservation fund created pursuant to chapter 121E to cure
43 the default, a short description of the eligibility requirements, and
44 the name, address, and local or toll free telephone number the
45 mortgagor may call to request this assistance.

46 To cure a default prior to acceleration, a mortgagor shall not be
47 required to pay any charge, fee, or penalty attributable to the exer-
48 cise of the right to cure a default. The mortgagor shall not be
49 liable for any attorneys' fees relating to the mortgagor's default
50 that are incurred by the mortgagee or servicer prior to or during
51 the period set forth in the notice required by section (b).

52 (c) If a creditor or servicer asserts that grounds for acceleration
53 of a home loan exist and requires the payment in full of all sums
54 secured by the security instrument, the mortgagor or anyone
55 authorized to act on the mortgagor's behalf shall have the right at
56 any time, up to the time title is transferred by means of a sale or
57 otherwise, to cure the default and reinstate the home loan by ten-
58 dering the total amount of principal, interest, late fees, escrow
59 deposits in arrears, reasonable and necessary expenses incurred by
60 the mortgagee or servicer, and reasonable attorney fees. Cure of
61 default as provided in this paragraph shall reinstate the mortgagor
62 to the same position as if the default had not occurred and shall
63 nullify as of the date of the cure any acceleration of any obligation
64 under the security instrument or note arising from the default.
65 The cure shall constitute payment in full satisfaction of all delin-
66 quent principal, interest, late fees, escrow shortages, legal fees,
67 and costs of any kind.

68 (d) After the mortgagee or servicer initiates a foreclosure action
69 or takes other action to seize or transfer ownership of the home,
70 the mortgagor shall only be liable for attorneys' fees that are rea-
71 sonable and actually incurred by the mortgagee or servicer based
72 on a reasonable hourly rate and a reasonable number of hours plus
73 any other reasonable and necessary expenses incurred by the cred-
74 itor or servicer.

75 (e) If a default is cured after the initiation of any action to fore-
76 close, the creditor or servicer shall take such steps as are neces-
77 sary to terminate the foreclosure proceeding or other action.

78 (f) A copy of the notice required by section (d) and an affidavit
79 demonstrating compliance with the section shall be filed in any
80 action or proceeding to foreclose on a home loan.

81 Penalties. Any person who fails to comply with any require-
82 ment imposed under this section with respect to a mortgagor shall
83 be liable to the mortgagor in an amount equal to the actual dam-
84 ages sustained by the mortgagor as a result of the failure, but in no
85 event less than \$1,000.

86 Any action under this section shall be brought in any court
87 within three years from the date of the occurrence. This para-
88 graph does not bar a person from asserting a violation of this
89 Chapter in an action to collect the debt, or foreclose upon the
90 home, or to stop a foreclosure upon the home, which was brought
91 more than three years from the date of the occurrence of the viola-
92 tion as a matter of defense by recoupment or set-off in such
93 action. An action under this section does not create an indepen-
94 dent basis for removal of an action to a court.

95 An action to enforce a violation of this section may also be
96 brought in any court by the attorney general of the commonwealth
97 within three years of the violation. An action under this section
98 does not create an independent basis for removal of an action to a
99 court.

100 The prevailing party in an action brought pursuant to this
101 section shall be awarded the costs of the action and a reasonable
102 attorney's fee as determined by the court.

1 SECTION 5. Chapter 255E of the General Laws, as appearing
2 in the 2004 Official Edition is hereby amended by inserting after
3 section 11 the following section:—

4 Section 12. It shall be the continuing and affirmative obligation
5 of each mortgage lender, who is licensed pursuant to this chapter
6 and who, directly or indirectly, makes more than fifty residential
7 real estate mortgage loans in the commonwealth in any calendar
8 year, as reported under the Home Mortgage Disclosure Act, 12
9 USC 1801 et seq., to help meet the housing credit needs of the
10 communities in the commonwealth, including low and moderate
11 income neighborhoods and residents, consistent with laws, rules
12 and regulations of the commonwealth and the federal government
13 relative thereto, and with safe and sound business practices.

14 The Commissioner of Banks shall assess the record of each
15 such lender in satisfying this continuing and affirmative obliga-
16 tion. To assist in carrying out the provisions of this section, the
17 commissioner shall promulgate regulations which shall include,
18 but need not be limited to, a consideration of such mortgage
19 lender's (a) origination of loans and other efforts to assist low and
20 moderate income residents, without distinction, to be able to
21 acquire or to remain in affordable housing in their neighborhoods,
22 (b) origination of loans that show an undue concentration and a
23 systematic pattern of lending resulting in the loss of affordable
24 housing units, and (c) such other considerations, including notice
25 of the schedule of examinations and the right of interested parties
26 to submit written comments relative to any such examination to
27 the commissioner, as, in the judgment of the commissioner, rea-
28 sonably bear upon the extent to which a mortgage lender is
29 helping to meet the housing needs of communities in the common-
30 wealth.

31 The Commissioner shall file any regulation proposed pursuant
32 to this section, excluding emergency regulations adopted pursuant
33 to section 2 of chapter 30A, or any amendment or repeal thereof
34 with the clerks of the senate and house of representatives, together
35 with a statement that the pertinent provisions of chapter 30A have
36 been complied with and a summary of the regulations in ordinary
37 language. The clerk shall refer such filing to the joint committee
38 on banks and banking within 5 days of the filing thereof. No reg-
39 ulation shall take effect until 90 days after it has been so filed;
40 provided, however, that such 90 day period shall not include days
41 when the general court is prohibited by law or rule from meeting
42 in formal session.

43 In considering an application from a licensed mortgage lender
44 for a renewal of a license under this chapter, the commissioner
45 shall consider, but shall not be limited to, the record of perfor-
46 mance of any such lender relative to the provisions of this section.
47 Said record of performance may be the basis for the denial of any
48 such renewal application.

49 Upon the completion of the examination of a mortgage lender
50 under this section, the commissioner shall prepare a written evalu-
51 ation of such lender's record of performance which shall be open
52 to public inspection upon request. Said written evaluation shall
53 include:

54 (1) the assessment factors utilized to determine the mortgage
55 lender's descriptive rating;

56 (2) the commissioner's conclusions with respect to each such
57 assessment factor;

58 (3) a discussion of the facts supporting such conclusions; and

59 (4) the mortgage lender's descriptive rating and the basis there-
60 fore.

61 Based upon such examination, the mortgage lender shall be
62 assigned one of the following ratings:

63 (a) outstanding record of performance in meeting the housing
64 credit needs of communities in the commonwealth;

65 (b) high satisfactory record of performance in meeting the
66 housing credit needs of communities in the commonwealth;

67 (c) satisfactory record of performance in meeting the housing
68 credit needs of communities in the commonwealth;

69 (d) needs to improve record of performance in meeting the
70 housing credit needs of communities in the commonwealth; or

71 (e) substantial noncompliance in meeting the housing credit
72 needs of communities in the commonwealth.

73 Notwithstanding the foregoing, the commissioner shall estab-
74 lish an alternative examination procedure for any mortgage lender,
75 which, as of the most recent examination, has been assigned a
76 rating of outstanding or high satisfactory for its record of perfor-
77 mance in meeting its community housing credit needs.

78 For the purposes of this section, no mortgage lender may
79 include a loan origination or loan purchase for consideration as
80 part of its review under this section if another mortgage lender
81 claims the same loan origination or purchase for its review under

82 this section or under section 14 of chapter 167 of the General
83 Laws.

1 SECTION 6. Section 2 of Chapter 255E of the General Laws,
2 as appearing in the 2004 Official Edition, is hereby amended by
3 striking out, in lines 3-7 the words:— provided, however, that any
4 person who is employed by or associated with a licensed mort-
5 gage broker or mortgage lender in the capacity of a mortgage
6 broker or mortgage lender under the direction of said licensed
7 mortgage broker or mortgage lender shall not be required to
8 obtain such license.

1 SECTION 7. Said section 2 of Chapter 255E of the General
2 Laws, as so appearing, is hereby amended by inserting in the
3 fourth sentence the words “a person employed by” before the
4 words “a bank.”

1 SECTION 8. Chapter 139 of the acts of 2006 is hereby
2 amended by inserting, after line item 7004-2475, the following
3 line item:—

7004-xxxx For the home preservation fund established pursuant to	
chapter 121E	10,000,000.